



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

Procurement  
Instruction  
Memorandum  
No. 01-1  
Feb 05, 2001

**MEMORANDUM FOR BUREAU CHIEF PROCUREMENT OFFICERS**

**FROM:** Corey M. Rindner, Director *Corey M. Rindner*  
Office of Procurement

**SUBJECT:** Class Deviation from Contractor Responsibility Requirements

The purpose of this memorandum is to implement a deviation from Federal Acquisition Circular 97-21, Final Rule, FAR Case 1999-010, "Contractor Responsibility, Labor Relations Costs, and Costs Relating to Legal and Other Proceedings."

FAR Case 1999-010 revised FAR provisions regarding contractor responsibility and added new certification requirements concerning certain violations. In response to requests to allow more time for implementation, the FAR Council agreed to change the final rule's effective date from January 19, 2001 to July 19, 2001.

Attached is a class deviation to change the effective date of FAR Case 1999-010 to July 19, 2001, or until implementation of a superceding FAR change, whichever occurs first. The deviation includes guidance on applicable contractor responsibility certifications that are to be used. As noted in the attached, the Chairman of the Civilian Agency Acquisition Council has approved this deviation.

Any questions regarding this deviation may be referred to Kevin Whitfield, of my staff, at (202) 622-0248.

Attachment

CLASS DEVIATION FROM  
FEDERAL ACQUISITION CIRCULAR 97-21  
(Final Rule FAR Case 1999-010,  
Contractor Responsibility, Labor  
Relations Costs, and Costs Relating to  
Legal and Other Proceedings)

**Action:** A final rule was published in the Federal Register on December 20, 2000 (Federal Acquisition Circular (FAC) 97-21, Federal Acquisition Regulation (FAR) Case 1999-010, Contractor Responsibility, Labor Relations Costs, and Costs Relating to Legal and Other Proceedings, 65 FR 80255). The final rule is immediately suspended. The previous FAR text including certification language is immediately restored. The suspension is until July 19, 2001 or until issuance of an appropriate FAR change, whichever occurs first.

Contracting Officers are directed to amend solicitations already issued that incorporated a certification provision from that final rule. Instead, the previous version of the certification is to be used. Amended solicitations should use the March 1996 edition of 52.209-5, or for commercial items, the October 2000 edition of 52.212.3(h), as appropriate. Electronic versions of the FAR as it existed before FAC 97-21 is posted under "FAR (Archived) HTML" for FAC 97-20 at:

<http://www.arnet.gov/far/>

The following sections were affected: 9.103(b), 9.104-1(d), 9.104-3 new paragraph (c), 14.404-2(i), 15.503(a), 31.205-21, 31.205-47(a) and (b), 52.209-5, and 52.212-3(h).

**Rationale:** The final rule, among other things, revised the FAR guidance for making responsibility determinations and added a new certification requirement requiring the prospective contractor to certify regarding certain violations adjudicated within the last three years. An affirmative responsibility determination must be made before the award of every contract. The certification applies to all procurements over \$100,000.

The Business Roundtable, the Chamber of Commerce, the National Association of Manufacturers, the Associated General Contractors of America, Inc., and the Associated Builders and Contractors, Inc., filed a lawsuit in the United States District Court for the District of Columbia on December 22, 2000, seeking to overturn the final rule.

The Administrative Procedure Act, 5 U.S.C. 705, gives authority for a stay of the final rule: "When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review." In the interest of justice, the General Services Administration believes implementation of the final rule should be voluntarily stayed.

The FAR Council has received letters from industry and Congress requesting an effective date

extension from January 19, 2001, to July 19, 2001.

Based on these concerns and other concerns expressed within the Federal Government, I have determined that the 30-day effective date did not give Federal contractors and the Federal Government sufficient time to meet the new obligations and responsibilities imposed by the December 20, 2000, final rule.

**Consultation:** In accordance with FAR 1.404 and 31.101, I have consulted with the Civilian Agency Acquisition Council Chairman before approving this class deviation to the FAR, who agrees with this deviation as does the Civilian Agency Acquisition Council. The appropriate consultation and approval has been accomplished under the authority granted to the civilian agencies under Civilian Agency Acquisition Council Letter 2001-1.

Approved: \_\_\_\_\_ Date: \_\_\_\_\_

Corey Rindner  
Director  
Office of Procurement